Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 Ghz Frequency Band, to Reallocate the 29.5-30.0 Ghz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	CC Docket No. 92-297

REPLY COMMENTS OF SUNNYVALE GDI, INC.

The Commission Should Not Rush to Judgment.

Sunnyvale GDI, Inc., Verdi, Nevada, urges the Commission to take time to do this rulemaking right, rather than rush to a premature judgment changing the rules under which local governments, other users, and manufacturers have worked in the 31 Ghz band since the Second Report and Order in Docket No. 82-334.[1] There are yet other interested federal agencies and affected municipal users to be heard from.

Equally importantly, the reply comments filed in this round of pleadings offer a realistic hope of accommodating all relevant users through compromise. Three of the five major participants

1/ See Fixed and Mobile Services (31 Ghz Band), 57 R.R.2d 1162 (1985), recon'd in part, 60 R.R.2d 1181 (1986).

have already voiced approval of a compromise that the Commission should find to be in the public interest. The details are set forth in the reply comments of Sierra Digital Communications, Inc., being filed today.

Specifically, the 29.1 gHz band would continue to be used by LMDS operators for hub-to-subscriber communication. The center 150 mHz of the 31 gHz band (31.075-31.225 gHz) would be utilized by LMDS operators for subscriber-to-hub operation. The lower 75 mHz (31-31.075 gHz) and upper 75 mHz (31.225-31.3 gHz), would be retained for use by existing and potential new users for fixed service point-to-point microwave radios.

Because of the frequency separation of the two band segments, this plan offers equipment design benefits in reduced filtering complexity and cost. Although the plan makes antenna design more challenging due to the frequency separation, the total difference between the upper and lower ends of the two bands is still under two gHz.

The plan allows for an appropriate transition. Current fixed service users and equipment manufacturers could continue providing needed services to the traffic control, common carrier, and private network operators. Existing users operating between 31.075 and 31.225 gHz would remain on their present frequencies until they received interference from, or caused interference to, LMDS operations. At that time, their equipment would be re-tuned (rather than replaced) to conform to the new frequency plan and

would henceforth operate in the 31.0 to 31.075 and/or 31.225 to 31.3 gHz band segments. All new fixed service licenses would be issued in the two outer band segments.

"Reg-neg" Would be an Appropriate Mechanism for Achieving Full Consensus on the Compromise.

If an additional process is needed to bring additional parties into alignment, an appropriate mechanism would be negotiated rulemaking under the procedure provided by Congress in P.L. 101-648 (1990)[2] and implemented by Section 1.18 of the Commission's rules, as adopted in Alternative Dispute Resolution Procedure, 6 F.C.C. Rcd 5669, 69 R.R.2d 1215 (1991), and modified in 7 F.C.C. Rcd 4679, 70 R.R.2d 1419 (1992).

Designation of a New Class of Primary Users Would Modify Existing Licenses in the Band.

None of the commenters so far has provided persuasive legal underpinning for the legal theory espoused in the Commission's Fourth Notice that it can modify the existing 31 Ghz licenses by the rulemaking procedure contemplated in the notice.

2/ Negotiated Rulemaking Act of 1990, now codified to 5 U.S.C., Chapter 5(III). While the Act sunsets later this year, Section 5 of P.L. 101-648, as amended, provides that the provisions of the act shall continue to apply to negotiated rulemaking proceedings pending on the sunset date.

One of the terms incorporated in the existing licenses, under the KOA case,[3] is that their frequencies are "shared on a co-equal basis with other stations...." See Section 94.65(n) of the Commission's rules, maintained in effect as to existing licensees by Section 101.4 (Transition Plan) of the rules.

If the Commission proposes to license other stations on these frequencies on a "primary" basis, that necessarily contradicts the existing prescription of a "co-equal" basis. "Protection," as used in the Fourth Notice, describes only half of the relationship among stations in the band. Accordingly, the Commission must proceed in the proper fashion if it is going to restrict existing licensees from interfering with the proposed new category of "primary" users.

Conclusion

For the reasons stated above and in Sunnyvale GDI's opening comments, the Commission should reappraise the impact on existing licensees in the 31 Ghz band in light of accurate data as to existing uses, should prepare an environmental impact statement in accordance with Part 1(I) of its rules, and should implement the compromise allocation in the public interest. In light of a careful appraisal of the adverse impact of its proposal, the

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3/ FCC v. National Broadcasting Co. (K)A), 319 U.S. 239 (1943). To the same effect is H&B Communications Corp. v. FCC, 420 F.2d 638 (D.C.Cir. 1969), discussed by Sierra Digital Communications in its reply comments at 5-8.

Commission should not adopt the amendments as proposed in the Fourth Notice.

Respectfully submitted,

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